IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 645 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARFARAZ YAKOOB MOHAMAD PATEL - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR SIKANDER SAIYED for Petitioner No(s).: 1.
MR PD BHATE, APP for Respondent No(s).: 1.
DS AFF.NOT FILED (R) for Respondent No(s).: 2,3.
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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 14/07/2005

ORAL JUDGMENT

1.By filing this petition under Article 226 of the Constitution of India, the petitioner has prayed

for quashing and setting aside the order of externment dated 3.12.2004 passed by respondent no.2 as well as the order dated 16.4.2005 passed by respondent no.3 dismissing the appeal preferred by the petitioner against the order of externment dated 3.12.2004.

2. Being aggrieved by the said order of externment dated 3.12.2004, the petitioner preferred the appeal under Section 60 of the Act before the Secretary, Home Department, Gandhinagar which came to be rejected vide order dated 16.4.2005. Against the aforesaid orders dated 3.12.2004 and 16.4.2005, the present Special Criminal Application is filed by the petitioner under Article 226 of the Constitution of India.

3. Heard Mr.Saiyed, learned advocate appearing for the petitioner and Mr.P.D.Bhate, learned APP for the respondents at length.

4. It is submitted that the show cause notice was issued on 22.05.2004 by the Assistant Police Commissioner, `D' division, Surat City and the order of externment came to be passed on 03.12.2004 and thus there is a delay of more

than seven months in passing the order of externment and therefore, only on the ground of delay the impugned order is required to be quashed and set aside. It is further submitted that the authority has placed a reliance on two secret witnesses but the statements thereof were not disclosed to the petitioner and hence the petitioner is deprived of the opportunity to meet with the allegations and hence the order is required to be quashed and set aside. In support of his argument, Mr.Saiyed has relied upon the decision in the case of Kalubhai Becharbhai Gohil V/s State of Gujarat and another, reported in 2003(2) GLR 1612 and has submitted that the statements of two secret witnesses have not been supplied and, therefore, the petitioner was denied the opportunity of effective reply.

5. On the other-hand, Mr.Bhate, learned APP has opposed this petition and has tried to justify the show cause notice and the impugned order. He submitted that the criminal cases registered against the petitioner are considered while

passing the order. He submitted that the externing authority has recorded the subjective satisfaction while passing the order, and, therefore, it is requested that this Court may not interfere with the impugned order and dismiss the petition.

6. Upon perusal of the scheme of the Act, it transpires that before passing any order of externment under Section 56 of the Act, the externing authority is required to issue a notice to the proposed externee under Section 59 of the Act which has to be specific and in detail. At this stage, reference is required to be made to the decision in the case of Aswin Chandulal Jaishwal Vs. The Deputy Commissioner of Police, Vadodara City, reported in 1989(2) GLR 1429, in para 9, this Court has observed as under.:

> "9. Shri Gupta has also stated in his affidavit that the Inspector, Vadi Police Station, Vadodara, had recorded statements of 11 persons in confidence. He further stated that he had applied mind on the

relevant material of the case produced before him, which includes the statement of the persons recorded by the police. It is not stated in the notice that the statements of the witnesses were recorded by the police. If at all any such statements would have been recorded and intended to be relied upon, at least, reference of the statements, without disclosing the names, with the time and place of such alleged illegal activities of the petitioner should have been made in the notice so that the petitioner could have got an opportunity to explain the said circumstances to lead evidence. Without giving him an opportunity to even letting the petitioner know that statements of 11 persons. It is true that general allegations are only required to be made in the notice, but when statements are relied upon for the externment order at least, the person to be affected by such order should be given an opportunity to explain at least the general nature of allegations to explain the

circumstances, which weighed considerably with the Externing Authority, and therefore, also the order vitiates."

7. In this view of the matter, it is the duty of the respondent authority to give effective and reasonable opportunity to the petitioner by giving statements of two secret witnesses to the petitioner. If the material relied upon by the authority while passing the impugned order is not supplied to the petitioner, it amounts to non-giving effective and reasonable opportunity for filing the reply against the show cause notice. Considering the aforesaid aspect of the matter and considering the fact that the petitioner has not been supplied with statements of the secret witnesses by which the petitioner is denied his right to give effective reply to the show cause notice, the order of externment passed by the authority is required to be quashed and set aside. Further, there is a delay in passing the order of externment. In view of the fact that the show cause notice came to be issued on 22.05.2004 and the externment

order was passed on 3.12.2004 and, therefore, there is a delay of about more than seven months in passing the order of externment.

8. Under the circumstances, the impugned order of externment dated 3.12.2004 passed by respondent no.1 which is confirmed in appeal vide order dated 16.4.2005 deserves to be quashed and set aside.

9. For the reasons stated above, this petition is allowed. The order of externment dated 3.12.2004 passed by the respondent no. 2 and confirmed in Appeal by the respondent no. 3 vide order dated 16.4.2005 under Section 60 of the said Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(Sharad D.Dave,J)

srilatha